

2008

Female Genital Mutilation: Exploring Strategies for Ending Ritualized Torture; Shaming, Blaming, and Utilizing the Convention against Torture

Patricia A. Broussard

Florida A & M University College of Law, patricia.broussard@famu.edu

Follow this and additional works at: <http://commons.law.famu.edu/faculty-research>



Part of the [Feminist, Gender, and Sexuality Studies Commons](#), [Human Rights Law Commons](#), and the [Law and Gender Commons](#)

Recommended Citation

Patricia A. Broussard, Female Genital Mutilation: Exploring Strategies for Ending Ritualized Torture; Shaming, Blaming, and Utilizing the Convention against Torture, 15 Duke J. Gender L. & Pol'y 19 (2008)

This Article is brought to you for free and open access by the Faculty Works at Scholarly Commons @ FAMU Law. It has been accepted for inclusion in Journal Publications by an authorized administrator of Scholarly Commons @ FAMU Law. For more information, please contact linda.barrette@famu.edu.

FEMALE GENITAL MUTILATION: EXPLORING STRATEGIES FOR ENDING RITUALIZED TORTURE; SHAMING, BLAMING, AND UTILIZING THE CONVENTION AGAINST TORTURE

PATRICIA A. BROUSSARD*

A student related to me that she had a conversation with a Nigerian, male friend in which she told him that she was very excited that her professor was writing an article on female genital mutilation. She reported that the he became enraged and shouted, "How dare this American woman characterize a custom of my culture as mutilation, and further, what right did she have to stick her nose into something that had nothing to do with her or her country." Since I knew that I would probably never have the opportunity to personally meet this "gentleman," I asked her to tell him the following: "No matter how many terms one conjures to lessen the impact of the horror visited upon women in the name of culture, mutilation is mutilation; it cannot be diminished by semantics. In addition, I am¹ my sisters' keeper; their pain is my pain. I have an obligation to use my words to speak truth to power in their name."

PREFACE: A WORD ON CULTURE AND TRADITION

"Culture is the whole complex of distinctive spiritual, material, intellectual and emotional features that characterizes a society or a group. It includes creative expressions, community practices and material or built forms."²

"Throughout history, people in all societies have created social norms that guide the behavior and conduct of their members."³ There are many positives traditions that sustain a culture; conversely there are negative and harmful practices that diminish societies. It is possible to criticize a tradition which harms a society without denigrating or demonizing the culture as a whole. Indeed, slavery, in addition to being an economic institution, was arguably a "tradition" in the United States for over two-hundred years. Most reasonable

* Associate Professor of Law, Florida Agricultural and Mechanical College of Law; B.S. Northwestern University, Evanston, Illinois; J.D., cum laude, Howard University School of Law, Washington, DC. I would like to thank my Constitutional Law I class for giving solid feedback on this article. Also, I must give a special acknowledgement to Professors Deleso Washington of Barry School of Law and Lisa Crooms of Howard University School of Law for reviewing and commenting on this paper. Lastly, I offer a heartfelt thanks and much gratitude to Professor Jennifer Smith for her encouragement.

1. Emphasis added.

2. ISMAIL SERAGELDIN, OUR CREATIVE DIVERSITY, REPORT OF THE WORLD COMMISSION ON CULTURE AND DEVELOPMENT, (Summary Version 1996), <http://unesdoc.unesco.org/images/0010/001055/105586Eb.pdf>.

3. *Female Circumcision: A Religious and Cultural Discussion, African Immigrant Program (AIP)*, <http://www.rainbo.org>.

persons would agree that slavery was a despicable practice which diminished the United States, dehumanized a race of human beings, and did very little to further American democratic culture. Likewise, those same reasonable persons would also agree that the abolition of slavery and Jim Crow succeeded in giving the United States the moral authority needed to spread a "culture" of democracy throughout the world. In other words, ending the terrible tradition of slavery did not result in the end of American culture, and ending female genital mutilation (hereafter referred to as FGM) will not destroy the societies that practice it. Moreover, strong criticism of FGM is not an attack on the culture of the societies that practice it, rather, it is an acknowledgement that all traditions are not worthy of continuation and that women should not be held hostage to practices that diminish their personhood. Just as slavery in the United States for almost two hundred and fifty years needed to end, so does the practice of FGM.

I. INTRODUCTION

*Torture: tor ture (noun) Middle French, from Old French, from Late Latin tortura 1. a: anguish of body or mind: Agony b: something that causes agony or pain; 2: the infliction of intense pain (as from burning, crushing, or wounding) to punish, coerce, or afford sadistic pleasure; 3: distortion or over-refinement of a meaning or an argument.*⁴

The phrase "female genital mutilation,"⁵ the practice of removing portions of females' genitalia, has made its way into the lexicon of the West in a horrific way. An article in the October 22, 2006 Atlanta Journal-Constitution started by stating, "A father stands accused of the unthinkable: brutally cutting his daughter's genitals. The girl was only two."⁶ Those words were telling because, although this father's act was indeed brutal and also unthinkable to most Western readers, it was in fact, the repetition of a "social ritual" which has occurred on a yearly basis to millions of women, girls, and infants.⁷ The father,

4. MERRIAM-WEBSTER ONLINE DICTIONARY, <http://www.merriam-webster.com/dictionary/torture> (last visited Sept. 24, 2007).

5. The author acknowledges that the term Female Genital Mutilation is politically incorrect and pejorative. There are more culturally sensitive words and phrases that could have been used to describe these acts inflicted upon women. The author consciously decided to use this term after concluding that the physical and mental pain visited upon women in the performance of these rituals is mutilation. Even in instances where the so-called more moderate forms of cutting are practiced, the impact on the collective consciousness of women worldwide and the nip/tuck that is performed on womanhood which robs them of their emotional integrity is mutilation. Moreover, mutilation is defined as "Disfigurement or injury by removal or destruction of any conspicuous or essential part of the body." STEDMAN'S MEDICAL DICTIONARY 1161 (26th ed. 1995).

6. Lateef Mungin, *Rite of outrage: Man accused of circumcising his 2-year-old daughter; Female genital mutilation not uncommon in some nations, but a rare case in this country will go to trial Monday in Gwinnett*, ATLANTA J.-CONST., Oct. 22, 2006, (GA Page) at 1J.

7. According to the World Health Organization (WHO), about "one hundred million women worldwide have undergone the procedure, which happens to three million girls under 10 every year." BBC News Africa, *Female Mutilation is Birth Risk*, <http://news.bbc.co.uk/2/hi/africa/5039536.stm> (last visited Sept. 24, 2007).

Khalid Adem, performed an African ritual known as FGM, a practice that is centuries old.⁸

Adem, a native of Ethiopia, "circumcised" his two-year old daughter with a pair of scissors in his Duluth, Georgia apartment while his friend held her down. The young girl's mother did not discover that her daughter's clitoris had been severed until two years later. The State of Georgia prosecuted and convicted Adem of aggravated battery and cruelty to children.⁹ Georgia has since enacted a law which specifically forbids the practice of FGM. Adem faced forty years in prison, but was sentenced to only ten¹⁰.

Human rights groups from around the world watched this case closely, not only because they viewed it as a landmark case, but because it also presented an opportunity to shine a light on FGM, a custom which is viewed by many as barbaric torture.¹¹

However, Adem's was not the first case of FGM (although Adem was not technically charged with female genital mutilation, this was the term used in the media to describe the acts which he committed that comprised aggravated battery) prosecuted in the United States. On January 9, 2004, the United States Department of Justice issued a press release announcing the arrest of two California residents on the charges of conspiring to perform FGM on two young girls.¹² One of the defendants bragged to undercover officers that he had performed more FGMs than anyone else in the Western world.¹³

If there is anything good that emerges from these two cases, it is that they present an opportunity for further dialogue on the subject of FGM. Much has already been written on this topic, but thus far the dialogue has been limited to scholars and human rights organizations.¹⁴ These cases have put FGM on the front pages of newspapers around the world and made the subject accessible to the general public in the Western world.¹⁵

8. "Ritual cutting and alteration of the genitalia of female infants, girls, and adolescents have been a tradition since antiquity. It persists today primarily in Africa and small communities in the Middle East and Asia." Committee on Bioethics, *Female Genital Mutilation*, 102 AM. ACAD. PEDIATRICS, 153-56, (1998) (1) at 153.

9. There was no law which made FGM a crime; therefore, Adem was prosecuted for aggravated battery and cruelty to children and sentenced to 10 years in prison. The Female Genital Cutting Education and Networking Project, *United States: Dad Sentenced in First Female Genital Cutting Trial in U.S.*, http://www.fgmnetwork.org/gonews.php?subaction=showfull&id=1162656121&archive=&start_from=&ucat=1& -

10. *Id.*

11. See The Female Genital Cutting Education and Networking Project, *Uganda: UN Urges Against Female Circumcision*, http://fgmnetwork.org/news/show_news.php?subaction=showfull&id=1173011002&archi.

The author of this article asserts, "Female Genital Mutilation is a barbaric tradition from the dark and ugly past of some societies in the country and elsewhere in the world which must, by universal acclaim, be abolished."

12. CNN.com, *Couple charged with agreeing to circumcise young girls*, <http://edition.cnn.com/2004/US/West/01/10/mutilation.arrest.ap/index.html>.

13. *Id.*

14. Atlanta Journal Constitution, *Dad Stands Trial over Daughter's Mutilation*, <http://ajcprintthis.clickability.com/pt/cpt?action=cpt&Dad+stands+trial=over=daughter>. Mungin, *supra* note 6.

15. *Id.*

It is the contention of this paper that FGM is a form of torture and that multiple strategies should be employed to eradicate it, including the Convention against Torture.¹⁶ It is only when there is extensive education, worldwide condemnation, shaming, and punishment for FGM that this practice will end. The author acknowledges that there is an ironic fact which complicates the position taken in this paper, and it is that the majority of acts of FGM are performed by women.¹⁷ In fact, in many African societies, the circumciser is an older woman who is past the age of childbearing.¹⁸

Women who perform these acts of torture serve as shields to hide the true guilty parties and to deflect attention from the chattel status of women in many of these countries and in certain tribes. Female genital mutilation has reduced women to instruments of male pleasure; it ensures the sexual control or suppression of the sexual behavior of women.¹⁹ If in fact this is what is occurring, it seems unduly harsh to punish victims, even when they participate in their own torture. Women appear to be powerless over their own bodies and thus, not the "guilty" parties in this equation. But how does one go about applying the Conventions against Torture for those practicing FGM without once again victimizing the victims? Hence, punishment should be inflicted upon governments that tolerate, encourage, and venerate this practice; while education should be provided for the "unwitting foils" who perform this practice.

The intent of this article is to graphically describe FGM; discuss the background of FGM and its health, psychological, and social implications; propose some workable solutions to ending FGM; and raise the level of awareness of the pain and suffering of women around the world. In part, this article will discuss invoking the Convention against Torture against those nations unwilling to end this horrific practice. There is also a caveat to this article: the author acknowledges that discussing solutions to the practice of FGM is not a simplistic and straight-forward endeavor; Professor Leslye Amede Obiora quoting Adam Kuper writes: "Complex notions, like culture, inhibit an analysis of the relationships among the variables they pack together. . .".²⁰ In other words, solutions to ending FGM are as complicated as the societies that practice it. Therefore, ending FGM cannot be reduced to feel-good sound bites, but must be thoughtful, respectful, and deliberate.

16. FGM is currently recognized as one of the worst violations of the Conventions of the Rights of the Child, but that distinction may be insufficient to bring the world condemnation that is needed to stop this practice. The Circumcision Reference Library, *Conventions of the Rights of the Child*, <http://www.cirp.org/library/ethics/UN-convention/>.

17. In addition, some of the females learning to perform circumcisions are as young as five years old. IRIN, In-Depth: Razor's Edge- The Controversy of Female Genital Mutilation, *Sierra Leone: Five years old and learning to circumcise other girls*, <http://www.irinnews.org/InDepthMain.aspx?InDepthId=15&ReportId=62472&Country=Yes>. See also AllAfrica.com, *Nigeria: Female Genital Mutilation*, <http://allafrica.com/stories/200702261168.html>.

18. *Id.*

19. Catherine L. Annas, *Irreversible Error: The Power and Prejudice of Female Genital Mutilation*, 12 J. CONTEMP. HEALTH L. POL'Y 331 (1995-1996).

20. Leslye Amemedede Obiora, *The Full Belly Quotient: Renegotiating a Rite of Passage*, 24 WOMEN'S RTS. L. REP. 181 (2002-2003).

II. BACKGROUND

*"as Nobel Peace prize laureates, we know there is a direct relationship between peace, justice and respect for human rights. As long as women are denied human rights, anywhere in the world, there can be no justice and no peace. Recognizing women's equal rights, therefore is an essential requirement for the creation of strong, sustainable and stable societies and ensuring that women enjoy equality with men in all areas of life is a key step to make human rights a universal reality."*²¹

What is Female Genital Mutilation?

FGM is, "The traditional custom of ritual cutting and alteration of the genitalia of female infants, girls, and adolescents" which "has been a tradition since antiquity."²² FGM is a collective term which describes several different traditional rituals that result in the circumcision and disfigurement of females.²³ Although FGM is deemed an "African" ritual, it is, according to the World Medical Association,²⁴ a common practice in over thirty countries, some of them non-African.²⁵ UNICEF reports that over two million²⁶ women, girls, and infants are mutilated a year.²⁷ In Djibouti²⁸ and Somalia, 98% of all girls are subjected to

21. NINTEY-EIGHT YEARS OF INTERNATIONAL WOMEN'S DAY: TIME FOR EQUALITY, http://www.aimalaysia.org/index2.php?option=com_content&do_pdf=1&id=223.

22. AMERICAN ACADEMY OF PEDIATRICS, *supra* note 8, at 153.

23. Although technically not deemed genital mutilation, other practices designed at suppressing female sexuality have been reported. For example, the BBC news reported that efforts are being made to discourage the practice of "breast ironing" which is widespread in Cameroon. The article stated that 26% of girls at puberty undergo this procedure in an attempt to make their breasts disappear. Cameroonian mothers believe that it protects their daughters from male attention and delays sexual activity. This is not a new practice and usually involves heating an instrument, such as a pestle or a coconut shell, and ironing the breast. Professor Anderson Doh, a cancer surgeon, says that the practice is very dangerous. BBC News, *Cameroon girls battle 'breast ironing'* <http://news.bbc.co.uk/2/hi/africa/5107360.stm> (last visited Sept. 24, 2007). See also *id.*

24. The World Medical Association, *The World Medical Association Statement on Female Genital Mutilation*, <http://www.wma.net/e/policy/c10.htm>.

25. The United States Department of State list these countries as: Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Cote d'Ivoire, Democratic Republic of the Congo, Djibouti, Egypt, Eritrea, Ethiopia, Gambia, Ghana, Guinea, Guinea-Bissau, Indonesia, Kenya, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone, Somalia, Northern Sudan, Tanzania, Togo, Uganda, and Yemen. U.S. Department of State, *Prevalence of FGM*, <http://www.state.gov/g/wi/rls/rep/9276.htm>. (last visited Sept. 27, 2007).

26. The American Academy of Pediatrics estimates the number of yearly FGMs at between four and five million and includes infant girls in its count. AMERICAN ACADEMY OF PEDIATRICS, *supra* note 8, at 153. The WHO quotes a smaller number. See WORLD HEALTH ORGANIZATION *supra* note 7. It is not clear who is included in that number as some age groups may be excluded from WHO's estimates.

27. Here again, the numbers vary depending on the agency doing the counting and the age groups included in that count., UNICEF, *Two million Girls a Year Mutilated*, <http://www.unicef.org/pon96/womfgm.htm> (last visited Sept. 24, 2007).

28. The 98% FGM rate exists in spite of the fact that Djibouti has enacted laws prohibiting this practice. The Penal Code was amended to include prohibition on FGM. Article 333 of the Penal code provides that 'acts of violence resulting in Genital Mutilation are punishable by imprisonment for 5 years and a fine of 1,000,000 francs. Penal code does not define the term FGM. Female Genital Mutilation: Democratic Republic of the Congo, Denmark, Egypt, Equatori. *Legislation and Other National Provisions*, <http://www.ipu.org/wmn-e/fgm-prov-d.htm>.

FGM.²⁹ Moreover, evidence has been uncovered that supports the fact that women in rural areas of Iraq have reported having undergone FGM.³⁰

First, it should be noted that FGM is performed without anesthesia and with the aid of instruments like scissors (as in the Georgia case)³¹, knives, razor blades, stones, broken glass, or any other sharp and accessible tool.³² To add to the complexity of FGM, in most instances this ritual is performed by a female elder,³³ with no medical training, who is called a midwife. The midwife will perform the cutting, while other women will hold down the child and force her legs open.³⁴

The four most common forms of FGM are described below. It is only when one fully comprehends the viciousness of this practice that it becomes clear that it is in fact a form of torture.³⁵ FGM takes several forms, all of which the American Academy of Pediatrics oppose.³⁶

29. UNICEF, *supra* note 27.

30. WADI, a German NGO conducted a study of 1,500 women in the Kurdish region of Germany and found that 60% of them had undergone FGM. It is estimated that 10-40% of all the women in the region had also been subjected to the practice. Feminist Daily News, *Evidence of Female Genital Mutilation in Iraq*, <http://feminist.org/news/newsbyte/uswirestory.asp?id=9218>.

31. Mungin *supra* note 6.

32. Khadijah F. Sharif, *Note: Female Genital Mutilation: What does the New Federal Law really Mean?*, 24 FORDHAM URB. L.J. 409, 414-15 (1997). See also AMERICAN ACADEMY OF PEDIATRICS *supra* note 8, at 153.

33. IRIN *supra* note 17.

34. ALICE WALKER, *WARRIOR MARKS: FEMALE GENITAL MUTILATION AND THE SEXUAL BLINDING OF WOMEN* 303-04 (Random House) (1993).

Pratibha Parmar interviews a female Circumciser/ Midwife and questions her about the practice of FGM. The interview reveals the value which the circumciser gives to "rituals" and tradition.

Q: Do you think it is a good tradition, and why?

A: (Translated) She says they're doing it because it's their tradition. She says normally during the healing period, and during the coming-out ceremony, there's lots of food, a lot of festivity, and they like it.

Q: When you are performing this operation and the children began to scream and cry, how do you feel?

A: She doesn't feel anything. She says she doesn't feel anything because she - she had experienced it and her mother did it to her, so she feels it - it's not harm, not harm to them

35. The United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment Act prohibits all forms of torture. This document defines torture, "as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity." FGM appears to fall into its definition of torture.-Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Part I, Article 1 (1), 1975

36. AMERICAN ACADEMY OF PEDIATRICS *supra* note 8, at 156. The American Academy of Pediatrics maintains that this practice has serious life-threatening health risks for women and children. . .

Clitorectomy

Clitorectomy involves excision of the skin surrounding the clitoris with or without excision of part or all of the clitoris. When this procedure is performed in infants and young girls, a portion or all of the clitoris and surrounding tissue may be removed.³⁷

Excision

Excision is the removal of the entire clitoris and part or all of the labia minora. Crude stitches of catgut or thorns may be used to control bleeding from the clitoral artery and raw tissue surfaces, or mud poultices may be applied directly to the perineum.³⁸

Infibulation

In infibulation³⁹ circumcision, the entire clitoris and some or all of the labia minora are excised, and incisions are made in the labia majora to create raw surfaces. The labial raw surfaces are stitched together to cover the urethra and vaginal introitus, leaving a small posterior opening for urinary and menstrual flow.⁴⁰

Type IV

Type IV includes different practices of variable severity including pricking, piercing or incision of the clitoris and/or labia; stretching of the clitoris and/or labia; cauterization of the clitoris; and scraping or introduction of corrosive substances into the vagina.⁴¹

The medical descriptions, while graphic, do not give the full import of the horror visited upon infants, young girls, and women; nor is the term female circumcision adequate.⁴² Using the term female circumcision invites one to

37. *Id.* at 154–55.

38. *Id.* at 154.

39. See Hanny Lightfoot-Klein, *Prisoners of Ritual: Some Contemporary Developments in the History of Female Genital Mutilation*, available at <http://www.fgmnetwork.org/articles/prisonersofritual.php> (last visited Sept. 24, 2007). (paper presented at the Second International Symposium on Circumcision in San Francisco 1991).

While clitoridectomy and excision of the inner labia are found among Africans with a variety of religious and cultural orientations, infibulations appears almost exclusively among Islamic peoples. Infibulation is best described as a regional rather than a religious practice, however, since it is generally not found in an estimated 80% of the world's [Muslims]. The medical and psychic consequences of infibulations in particular may be devastating and lifelong.

40. AMERICAN ACADEMY OF PEDIATRICS, *supra* note 8, at 154.

41. *Id.*

42. Fran Hosken reports on an eyewitness account of FGM performed in Somalia. Fran Hosken, *Female Genital Mutilation: Strategies for Eradication*, <http://www.nocirc.org/symposia/first/hosken.html>.

With the Somalis, the circumcision of girls takes place in the home among women relatives and neighbors. The grandmother or an older woman officiates. At each occasion, usually only one little girl or at times two sisters are operated; but all girls, without exception, must undergo this mutilation as it is a requirement for marriage. The operation itself is not accompanied by any ceremony or ritual.

compare it to the common practice of male circumcision which is widely performed in the United States.⁴³ A more apt comparison is to compare FGM to castration since FGM removes a vital part of the sexual organ that allows a woman to have orgasm and experience the pleasure associated with intercourse. Is it any wonder that Nahid Toubia concludes the following: "These women are holding back a silent scream, a silent anger, so strong it could shake the [E]arth."⁴⁴

A. Health Implications

FGM constitutes a significant health risk to females wherever it is practiced. When FGM is coupled with the realities of living in a third-world society,⁴⁵ the

The child, completely naked, is made to sit on a low stool. Several women take hold of her and open her legs wide. After separating her outer and inner lips, the operator, usually a woman experienced in this procedure, sits down facing the child. With her kitchen knife, the operator first pierces and slices open the hood of the clitoris. Then she begins to cut it out. While another woman wipes off the blood with a rag, the operator digs with her sharp fingernail a hole the length of the clitoris to detach and pull out the organ. The little girl, held down by the women helpers, screams in extreme pain; but no one pays the slightest attention.

The operator finishes this job by entirely pulling out the clitoris, cutting it to the bone with her knife. Her helpers again wipe off the spurting blood with a rag. The operator then removes the remaining flesh, digging with her finger to remove any remnant of the clitoris among the flowing blood. The neighbor women are then invited to plunge their fingers into the bloody hole to verify that every piece of the clitoris is removed.

But this is not the end. The most important part of the operation begins only now. After a short moment, the woman takes the knife again and cuts off the inner lips (labia minor) of the victim. The helpers again wipe the blood with their rags. Then the operator, with a motion of her knife, begins to scrape the skin from the inside of the large lips.

With the abrasion of the skin completed, according to the rules, the operator closes the bleeding large lips and fixes them one against the other with long acacia thorns.

At this stage of the operation, the child is so exhausted that she stops crying, but often has convulsions. The women then force down her throat a concoction of plants.

The operator's chief concern is to leave an opening no larger than a kernel of corn or just big enough to allow urine, and later the menstrual flow, to pass. The family honor depends on making the opening as small as possible because with Somalis, the smaller the artificial passage is, the greater the value of the girl and the higher the bride price.

When the operation is finished, the woman pours water over the genital area of the girl and wipes her with a rag. Then the child, who was held down all this time, is made to stand up. The women then immobilize her thighs by tying them together with ropes of goat skin. This bandage is applied from knees to the waist of the girl, and is left in place for about two weeks. The girl must remain lying on a mat for the entire time, while all the excrement evidently remains with her in the bandage.

After that time, the girl is released and the bandage is cleaned. Her vagina is now closed, and remains so until her marriage. Contrary to what one would assume, not many girls die from this torture. There are, of course, various complications which frequently leave the girl crippled and disabled for the rest of her life.

43. Clean-Cut All-American Boys: Circumcisions in the USA, <http://www.circumstitions.com/USA.html>.

44. Nahid Toubia Testimony (June 1993), in TESTIMONIES OF THE GLOBAL TRIBUNAL ON VIOLATIONS OF WOMEN'S HUMAN RIGHTS AT THE UNITED NATIONS WORLD CONFERENCE ON HUMAN RIGHTS IN VIENNA, 46 (Niamh Reilly ed.) (1993).

45. Lightfoot-Klein, *supra* note 39.

results are overwhelming. The lack of proper health care and the pervading attitudes towards the role of women in the society lead to serious health complications for many who are subjected to FGM.⁴⁶ The Encyclopedia of Medicine gives this stark view of the various complications of FGM:

First, you can suffer fatal hemorrhaging, because in the clitoris there are a lot of blood vessels, including the dorsal artery, the vein of the clitoris, so young girls can bleed to death. Fear is also a very important problem, because when those children are taken away they are not prepared for the pain they are going to suffer, and the pain creates stress and shock. In addition, you have infections, even tetanus. Infections begin in the area of the wound but may spread to the internal organs. . . .but that is not all. The woman has been cut and traumatized, so intercourse is very painful and there are a lot of problems giving birth.⁴⁷

Hanny Lightfoot-Klein⁴⁸ reports that, although no accurate statistics are available, in Sudan, the country where she has conducted research, medical fatalities are quite high and vary from ten to thirty percent.⁴⁹

Likewise, the *New England Journal of Medicine* reports that the most common long-term complication is the formation of cysts in the line of the scar.⁵⁰ These cysts can be as small as a pea or as large as a grapefruit. In addition, the development of dermoid cysts and keloids⁵¹ can cause pain and embarrassment.⁵² Moreover, most women will be unable to experience orgasm as a result of the removal of their clitoris.⁵³

In an article published in the British journal *The Lancet*,⁵⁴ a study found that women who undergo FGM are at significant risk for having a caesarean

46. E-note.com: The Encyclopedia of Medicine, *Female Genital Mutilation*, <http://www.enotes.com/medicine-encyclopedia/female-genital-mutilation>.

47. *Id.*

48. Hanny Lightfoot-Klein has been an independent researcher into the enigma of the genital mutilation of non-consenting children worldwide for a quarter of a century. Hanny Lightfoot-Klein, *Expert Witness Qualifications*, <http://www.lightfoot-klein.com/expertwitness.html>

49. Lightfoot-Klein, *supra* note 39. Hanny Lightfoot-Klein states:

As may be expected, the immediate complications most commonly seen are hemorrhage, shock due to intolerable and prolonged pain, infection, tetanus, and retention of urine due to occlusion. Later, complications resulting from a tight infibulation generally involve difficult and painful urination, urinary infections resulting from debris collecting behind the infibulation, a damming up of menstrual blood in virgins, inclusion cysts and fistulae. At marriage, the infibulation must be torn, stretched or cut open by the bridegroom, and then prevented from healing . . . Giving birth is fraught with mortal danger for both the infibulated woman and her infant, due to the inelasticity of her infibulation scar, which prevents dilation beyond four of the ten centimeters required to pass the fetal head. The infibulation must therefore be cut in an anterior direction and after birth has taken place, it must be resutured. *Id.*

50. Hosken *supra* note 42. (citing the *New England Journal of Medicine*).

51. A keloid is tissue scarring resulting from trauma or surgical incision. WEBSTER'S II NEW COLLEGE DICTIONARY 69 (3rd ed.) (2005).

52. Nahid Toubia, *Female Circumcision as a Public Health Issue*, 331 NEW ENG. J. OF MED. 712 (1994), <http://content.nejm.org/cgi/content/full/331/11/712>. Toubia adds that another problem is related to labor and delivery of these immigrants in Europe and North America because physicians are not trained to deal with infibulated women and perform a high number of cesarean sections. .

53. Catherine L. Annas, *Irreversible Error: The Power and Prejudice of Female Genital Mutilation*, 12 J. CONTEMP. HEALTH L. & POL'Y 325, 329 (1995-1996).

54. Toubia, *supra* note 52.

section, an episiotomy, an extended hospital stay, and for suffering postpartum hemorrhage. These are potential complications for women who are fortunate enough to have their babies in medical facilities.⁵⁵

In addition to the physical complications outlined above, sexually transmitted diseases are common complications of FGM.⁵⁶ Margaret Brady writes that the complications that result from FGM create an environment for infection and resulting infertility.⁵⁷ More devastating is the proposition that FGM may play a role in HIV transmission.⁵⁸ The irony behind these findings is that at least one tribe, the Maasai, believes that FGM actually curbs the spread of HIV/AIDS in the community by reducing a woman's sexual feelings for men: "when you cut a girl, you know that she will remain pure until after she gets married, and after marriage, she will remain faithful."⁵⁹

B. Psychological Ramifications

In Alice Walker's 1991 novel, *Possessing the Secret of Joy*⁶⁰, Walker tells the story of Tashi:

Tashi herself was not circumcised at puberty. As a young child, however, she did hear the screams of her older sister, who died bloodily in a botched initiation in the tribal village. Tashi repressed this memory and "forgot why the sight of her own blood terrified her." Subsequently, in a voluntary act of identification with Pan-African aspirations, the teen-age Tashi submits herself to the tsunga's knife.⁶¹

The novel unfolds to reveal the subsequent psychological damage to Tashi which results in her killing the person who performed her "circumcision."

55. WHO Study Group on Female Genital Mutilation and Obstetric Outcome, *Female Genital Mutilation and Obstetric Outcome: WHO Collaborative Prospective Study in Six African Countries*, 367 LANCET 1835 (June 3, 2006). What is interesting about this study is that it deals with women who were fortunate enough to have their babies in hospitals. The study did not and could not take into account girls and women who gave birth outside of the hospital environment. If a woman needs a caesarean and she is giving birth in a hut, she and her child will more likely than not suffer even greater complications than a woman who has medical care. Likewise for the other side effects mentioned above.

56. Margaret Brady, *Female Genital Mutilation: Complications and Risk of HIV Transmission*, 13 AIDS PATIENT CARE AND STDs 709 (1999).

57. *Id.*

58. *Id.* Brady states:

... a research study performed in Nairobi indicated that FGM predisposes women to HIV infection in many ways (e.g. increased need for blood infusion due to hemorrhage either when the procedure is performed, at childbirth, or a result of vaginal tearing during defibulation and intercourse, and the use of the same instruments for other initiates). Because FGM raises the social status of the parents, the dowry demands can be high and therefore the young girls can be married off to older men who are already infected. Contact with blood during intercourse is believed to be responsible for the transmission of HIV infection among homosexuals. *Id.* at 712-13.

59. IRIN Web Special, *Razor's Edge: The Controversy of Female Genital Mutilation*, available at <http://www.irinnews.org/InDepthMain.aspx?InDepthId=15&ReportId=62462> (hereinafter IRIN WEB SPECIAL).

60. ALICE WALKER, *POSSESSING THE SECRET OF JOY* (1992 ed.).

61. *Id.* at 8-9.

Although Walker clearly lays out the dire psychological state of her fictionalized character, little research is available on the psychological effects suffered by the millions of victims of FGM.⁶²

Efua Dorkenoo⁶³ testified before the Scottish Parliament that FGM results in psychosexual problems where many women will grow up feeling deceived by their parents and unable to respond sexually to their partners. She further stated that there would also be lingering issues of psychological morbidity.⁶⁴ Likewise, Gregory A. Kelson writes that women who have been the victims of FGM have sought asylum to protect their daughters from the practice in their home countries.⁶⁵ Despite the lack of statistics, one can only conclude that these mothers want to protect their daughters from both the physical and psychological ramifications of FGM. These women are willing to take whatever steps they need to in order to prevent their daughters from being subjected to FGM.

Moreover, the realization of the horrific health implications that result from FGM leads to the logical conclusion that there is deep and long-lasting psychological damage attendant to it. In addition, the lack of statistics on the extent of psychological ramifications supports the notion of intimidation and systemic torture and terrorism which has led to the silence of the victims. Eugenie Anne Gifford said it poetically, "...the inability of mutilation survivors to fully communicate to those outsiders – or even to each other – the true horror they have experienced. There are simply no words, in any language or dialect, which speaks to the unspeakable."⁶⁶

III. WHY SOCIETIES PRACTICE FEMALE GENITAL MUTILATION

FGM is described by Hanny Lightfoot-Klien as an ancient blood ritual.⁶⁷ Pointing to the Koran and scriptures, some scholars believe that FGM has probably been performed for 1,400 years.⁶⁸ The justifications for FGM are as varied as the procedures and are often mired in myths and half-truths.

62. Among girls who live in communities where female circumcision carries high social value, the desire to gain social status, please parents, and comply with peer pressure is in conflict with the fear, trauma, and after effects of the operation. IRIN Web Special, *supra* note 59.

63. Efua Dorkenoo is the director of FORWARD International, an activist and educational organization established to eradicate harmful traditional practices, primarily female genital mutilation. The Scottish Parliament, *Equal Opportunities Committee Official Report 14 December 2004*, <http://www.scottish.parliament.uk/business/committees/equal/or-04/eo04-1902.htm>.

64. *Id.*

65. Gregory A. Kelson, *Granting Political Asylum to Potential Victims of Female Circumcision*, 3 MICH. J. GENDER & L. 266 (1995–1996).

66. Eugenie Anne Gifford, *The Courage to Blaspheme: Confronting Barriers to Resisting Female Genital Mutilation*, 4 UCLA WOMEN'S L.J. 338 (1993–1994).

67. See Lightfoot-Klein *supra* note 39.

68. Religious Tolerance, Ontario Consultants on Religious Tolerance, *Female Genital Mutilation: Debates about FGM in Africa, the Middle East & Far East*, http://www.religioustolerance.org/fem_cirm.htm.

A. Religion

Societies which practice Islam have pointed to the traditions of Mohammed as one source and justification for a form of FGM known as sunnah circumcision.⁶⁹ However, the Koran makes no mention of requiring either male or female circumcision, but does allude to it in verse 16:23 of the Koran, which has been interpreted as God testing Abraham by commanding him to be circumcised.⁷⁰

The other source relied upon in the Muslim community to justify FGM is the Sunnah of Mohammed (tradition through words and actions).⁷¹ Sami A. Aldeeb Abu-Sahlieh cites the following passage from contemporary Arab authors which purports to be a conversation (sunnah) between Mohammed and a woman:

The most mentioned narration reports a debate between Mohammed and Um Habibah (or Um 'Atiyyah). This woman, known as an exciser of female slaves, was one of a group of women who had immigrated with Mohammed. Having seen her, Mohammed asked her if she kept practicing her profession. She answered affirmatively adding: "unless it is forbidden and you order me to stop doing it." Mohammed replied: "Yes, it is allowed. Come closer so I can teach you: if you cut, do not overdo it (la tanhaki), because it brings more radiance to the face (ashraq) and it is more pleasant (ahza) for the husband." According to the others, he said: "Cut slightly and do not overdo it because it is more pleasant for the woman and better (ahab, from other sources) for the husband." We shall hereinafter refer to this narration as the exciser's narration.⁷²

Likewise, several "sayings" of Mohammed deal with sexual pleasure between a husband and wife. These sayings, coupled with the aforementioned exciser's narration compose the basis of the religious argument in favor of FGM.

Within the Muslim community, there are at least three views on FGM; one group is against all forms of circumcision (including for males),⁷³ another group

69. Sami A. Aldeeb Abu-Sahlieh, *To Mutilate in the Name of Jehovah or Allah: Legitimization of Male and Female Circumcision*, 13 MEDICINE & LAW 575, 563 (July 1994).

70. *Id.*

71. *Id.*

72. *Id.*

73. Mufti Ahmad Kutty, in response to a question on whether female circumcision is really obligatory issued a Fatwa on August 28, 2002 which said,

"When we come to the issue of female circumcision, however, the matter is quite different. There is nothing in the sources, either the Qur'an or the Sunnah, to suggest that it is a prescribed ritual of initiation for women in Islam. While one finds a number of traditions from the Prophet, peace and blessings be upon him, which clearly indicates that he ordered pagan males who converted to undergo circumcision, it is not stated anywhere that the Prophet, peace and blessings be upon him, ordered any woman who entered Islam to undergo this practice. Because there is no absolute proof from the sources of Islam prescribing female circumcision, the vast majority of scholars do not include it in the obligatory rituals of Islam. It is common knowledge in Islam that if the Prophet, peace and blessings be upon him, had wanted female circumcision to be an integral aspect of religious practice in Islam the same way that male circumcision is, he would have said so clearly. Since he did not do so, we can safely assume it is not a prescribed ritual of Islam."

http://www.islamonline.net/servlet/Satellite?cid=1119503545826&pagename=IslamOnline-English-Ask_Scholar%2FFatwaE%2FFatwaEAskTheScholar.

advocates, in the name of religion, for the traditional forms of FGM, while a third group believes that FGM is fine, if you cut just a little bit.⁷⁴ Scholars from all sides of the issue agree that there is little or no support for FGM in the Koran, or any other religious text.⁷⁵ Nonetheless, the notion that FGM is based upon some religious mandate is one of the myths that has survived all of these centuries and reinforces the justification for its continuation.

B. Social Reasons

Coming of Age Ritual

Various non-religious reasons are given for the practice of FGM. One such reason is FGM marks a girl's coming of age. An article on FGM among the Maasai community of Kenya states that, "the ceremony of FGM marks the coming of age of a girl; she sheds the last vestiges of childhood and joins the league of womankind."⁷⁶ In addition, there are social repercussions for failure to submit to FGM.⁷⁷

Khadijah F. Sharif in an article entitled *Female Genital Mutilation: What Does the New Federal Law Really Mean?* writes:

In cultures that practice female genital mutilation, the ritual confers upon women full social acceptability, integration into the community, and serves as a rite of passage to womanhood. For many women in these cultures, the practice enables them to identify with their heritage and to enjoy recognition as full members of their ethnic group enjoying social benefits and privileges.⁷⁸

If in fact the true culture rationale behind performing this ritual is welcoming pubescent girls into womanhood, how could one ever justify cutting an infant or

In November 2006, at an Egyptian conference that featured Muslim scholars from around the world, two of Egypt's top clerics issued an edict outlawing the practice of FGM. Mohammed Sayed Tantawi, the Grand Sheik of Al-Azhar and Grand Mufti Ali Gomaa stated that FGM caused both physical and mental harm on women and those who practice it should be punished. Theage.com.au, *Muslim Scholars Rule Female Circumcision un-Islamic*, <http://www.theage.com.au/news/world/muslim-scholars-rule-female-circumcision-unislamic/2006/11/24/1163871589618.html>.

74. The Minaret of Freedom Institute issues a series of pamphlets which summarize Islamic positions on important issues of the day. Imad-ad-Dean Ahmad writes, "Although female circumcision is not mandated, one tradition of disputed authenticity permits (but does not encourage) the removal of a minuscule segment of skin from the female prepuce, provided no harm is done." Imad-ad-Dean Ahmad, *Female Genital Mutilation: An Islamic Perspective*, <http://www.minaret.org/fgm-pamphlet.htm>.

75. UNICEF: Innocenti Research Centre, *Changing a Harmful Social Convention: Female Genital Mutilation/Cutting*, <http://www.unicef-icdc.org/publications/pdf/fgm-gb-2005.pdf>

76. IRIN Web Special, *supra* note 59, at 22.

77. *Id.*

Many educated Masaai men and women still favour the practice of FGM, not because they are uninformed about the risks involved, but for fear of the social repercussions, should they reject the custom. An uncircumcised woman remains a girl in the eyes of the community, however much education she may have, or whatever the status she may attain in the outside world. For a woman who refuses to be circumcised, the risk of isolation is great, the chances of finding a Masaai spouse are reduced to almost nil, and her status in society will always be that of a child.

78. Sharif, *supra* note 32.

any young girl under the age of puberty. Yet, "The age at which girls undergo FGM ranges from seven days old to young adulthood. . ."⁷⁹

Insures Marriage for Economic Survival

Likewise, in most cultures, FGM marks the marriageability of women. This is especially crucial in societies where marriage and the joining of families is the basis for the socio-economic security.⁸⁰ If women need to marry in order to survive economically, they are more likely to submit to FGM without question.

Guarantees Male Superiority

*"Female genital mutilation shows an attempt to confer an inferior status on women by branding them with this mark which diminishes them and is a constant to them that they are only women, inferior to men, that they do not even have rights over their own bodies. . ."*⁸¹

Another reason given in support of FGM is to insure that men remain the heads of their households. Hanny Lightfoot-Klein reports, "It is believed in Sudan that the clitoris will grow to the length of a goose's neck until it dangles

79. AYAAN HIRSI ALI, INFIDEL 31–33 (Free Press) (2007). Ayaan Hirsi Ali described how she was circumcised:

In Somalia, like many countries across Africa and the Middle East, little girls are made "pure" by having their genitals cut out. There is no other way to describe this procedure, which typically occurs around the age of five. After the child's clitoris and labia are carved out, scraped off, or, in more compassionate areas, merely cut or pricked, the whole area is often sewn up, so that a thick band of tissue forms a chastity belt made of the girl's own scarred flesh. A small hole is carefully situated to permit a thin flow of pee. Only great force can tear the scar tissue wider, for sex. . . . Uncircumcised girls will be possessed by the devils, fall into vice and perdition.

. . . I was next. Grandma swung her hand from side to side and said, "Once this long kintir is removed you and your sister will be pure." From Grandma's words and gestures I gathered that this hideous kintir, my clitoris, would one day grow so long that it would swing sideways between my legs. She caught hold of me and gripped my upper body in the same position she had put Mahad. Two other women held my legs apart. The man, who was probably an itinerant traditional circumciser from the blacksmith clan, picked up a pair of scissors. With the other hand, he caught hold of the place between my legs and started tweaking it, like Grandma milking a goat. "There it is, there is the kintir," one of the women said.

Then the scissors went down between my legs and the man cut off my inner labia and clitoris. I heard it, like a butcher snipping the fat off a piece of meat. A piercing pain shot between my legs, indescribable, and I howled. Then came the sewing; the long, blunt needle clumsily pushed into my bleeding outer labia, my loud and angry protests, Grandma's words of comfort and encouragement. "It's just this once in your life, Ayaan. Be brave, he's almost finished." When the sewing was finished, the man cut the thread off with his teeth.

This is all I can recall of it.

Ayaan Hirsi Ali was only five years old.

80. Gifford, *supra* note 67. Gifford notes, "To marry well is a woman's chief opportunity for economic survival in practicing cultures, and she is repeatedly told that she will be unmarried if her reputation for chastity does not remain in tact."

81. Isabel Coello, *Female Genital Mutilation: Marked by Tradition*, 7 CARDOZO J INT'L & COMP. L. 213 (1999). Coello quoting Former President of Burkina-Faso, Thomas Sankara. Burkina-Faso is one of the few countries in Africa which prohibits female genital mutilation.

between the legs, in rivalry with the male's penis, if it is not cut."⁸² FGM guarantees that there will no competition whatsoever between husbands and wives with respect to size of genitalia. Eugenie Anne Gifford characterizes this justification as, "the need for differentiation between the sexual identities of the genders."⁸³

Likewise, Alice Walker, while conducting research on her novel which deals with the subject of FGM, made the following observations: "Women are blamed for their own sexual mutilation. Their genitalia are unclean. The activity of the un-mutilated female vulva frightens men and destroys crops. When erect, the clitoris challenges male authority."⁸⁴

Tradition

Likewise, tradition and cultural identity are cited as reasons for continuing FGM. The rationale is since we have always done it, we should continue to do so.⁸⁵ Dr. Lightfoot-Klein states:

The methods used to repress female sexuality throughout history up to the present have been many, and have extended worldwide. Lerner observes that in ancient Mesopotamia, the Code of Hammurabi marks the beginning of the institutionalization of the patriarchal family. From 1250 B.C. on, public veiling and the sexual control of women have been essential features of patriarchy. Under this code, fathers were empowered to treat the virginity of their daughters as a family property asset.⁸⁶

Hygiene and Health

Ironically, cleanliness and health are also justifications for FGM: "...female genital mutilation is often believed to carry with it a persuasive array of health benefits. It is believed to make conception and child bearing easier, to prevent malodorous vaginal discharges, to prevent all manner of sickness, vaginal parasites and contamination of mother's milk."⁸⁷

"Female genital mutilation is also presumed to cure disease and heal young girls who were often ill before their "circumcision" took place. But when "circumcised" girls fall ill, it is said to be due to a supernatural force. Circumcision has been mistakenly credited with curing women who suffer from...melancholia, nymphomania, hysteria, insanity...epilepsy... kleptomania... and truancy."⁸⁸ The idea that women's genitals are somehow

82. Lightfoot-Klein, *supra* note 40, at 2.

83. Gifford, *supra* note 66 at 348.

84. ALICE WALKER, *WARRIOR MARKS* 18 (Random House) (1993 edition).

85. *Id.* at 244. Efua Dorkenoo, in an interview with Alice Walker, relates that she wrote a play entitled *Tradition! Tradition!* In the play, all the women had one leg amputated as a symbol of the mutilation because talking about a leg is an acceptable act, whereas talking about genitals is taboo. The play, a comedy, attempted to examine the history and origins of FGM and open a dialogue on the subject.

86. Lightfoot-Klein, *supra* note 39.

87. *Id.*

88. Robbie D. Steele, *Silencing the Deadly Ritual: Efforts to End Female Genital Mutilation*, 9 GEO. IMMIGR. L.J. P. 115 (1995) quoting Hanny Lightfoot-Klien, *Prisoners of the Ritual: An Odyssey into Female Genital Circumcision in Africa*

inherently unclean and need to be ritualistically cleansed is problematic. This is especially true when there is no similar assumption made about the male genitalia. It is truly ironic that FGM, in fact, causes those very ills that it purportedly is meant to rectify. Moreover, how can FGM ever be justified in the name of health and hygiene when it is performed on infants and females as young as two years old? It appears that "hygiene" is a pretext for virginity and chastity and a way to ensure that women are psychologically circumscribed to their place in the society. It is easy to see that if a woman believes herself to be unclean, and therefore, unworthy, she will submit to torture in the name of societal acceptance.

Insures Virginity and Chastity

Insuring virginity and chastity are two justifications that arise in all societies that practice FGM. Virgins are worth more to their families because they can be married off to wealthy males who will pay "bride prices" for the assurances that a woman is chaste.⁸⁹ To that extent, the desire for women to be virtuous is directly related back to the aforementioned economic incentives which underlie the practice. Attendant to these two rationales is men's desire to suppress the women's sexual desires, preserve virginity until marriage, and prevent women's outward enjoyment and sexual response.⁹⁰

FGM has resulted in the neutering of many women; those subjected to its most extreme forms are no more than commodities who can give pleasure but who cannot receive it.⁹¹ In other words, women are reduced to property. This is especially clear when FGM is viewed as more than the initial "cut," but a series of cuts that recur at the husband's demand. In extreme forms of FGM, the woman must be opened and closed after intercourse.⁹² This fact reduces women's genitalia as some sort of resealable packages which are kept protected for the users' pleasure.

The difficulty that arises from the conclusions that have been articulated thus far is that the reasons usually offered to support the continuation of FGM are facially legitimate (with the exception of insuring male superiority and pleasure) and seemingly support order in societies that practice it.

IV. LEGITIMATE OUTRAGE OR WESTERN PATERNALISM

The purpose of the lengthy and graphic background information on FGM is to provide a straight-forward view of a practice that is the reality of millions of women, girls, and infants all over the world. These strangers are human beings who partake in customs and rituals that are as complex as the languages

89. Sharif, *supra* note 33, at 416.

90. Steele, *supra* note 32, at 416.

91. Studies have actually shown that a woman's sexuality is affected by the degree of the FGM as well as by the social messages telegraphed by the society. In other words, the nature of the physical injury coupled with the psychological damage play an important role in a woman's ability to enjoy sex. Some women who have been victims of FGM can achieve orgasm, but in many instances, FGM has interfered with their sexuality. Nahid, Toubia, *Female Circumcision as a Public Health Issue*, 33 NEW ENG. J. MED. 712, 714 (Sept. 15, 1994).

92. UNICEF *supra* note 75.

they speak. Who has the right to speak for them? Should the proffered justifications of tradition and religion render the rest of the world mute to this practice, or has the time for action long since passed?

Notwithstanding the enunciation of a straight-forward view of FGM, there is still debate in the Western world on the need to eradicate FGM. The debate is captured in the notion of Cultural Relativism vs. Human Rights.⁹³ Some Western anthropologists compare FGM to Western societies utilizing breast enhancement, tattooing, and other cosmetic surgeries to modify and arguably, to better one's appearance. In addition, these anthropologists argue that FGM is no different from male circumcision, which is widely used in the West. The problem with these comparisons is that they do not take into consideration the notion of free will and "choice" when comparing FGM to the widespread use of cosmetic surgery in the Western world. Moreover, the young age of many of the girls subjected to FGM belies the idea that FGM is some sort of life enhancing procedure that adds to the quality of life of women. Likewise, the above-stated data on the harm caused by FGM make it clear that FGM leaves women mentally and physically broken.⁹⁴ In the case of FGM, a practice is imposed upon women which can have life-long detrimental effects on major bodily functions and sexual pleasure. These effects should not be analogized to a woman from the West requesting a heart shaped tattoo over her navel. Lastly, although the practice of male circumcision is equally useless, it, too, cannot be compared with FGM as there are clear and major differences between FGM and male circumcision. First, there are no long term sexual dysfunctions associated with circumcision. And secondly, recent studies have shown that there may be a correlation between circumcision and the prevention of HIV.⁹⁵ In addition, the

93. Jacqueline Castledine, *Female Genital Mutilation: An Issue of Cultural Relativism or Human Rights?* <http://www.mtholyoke.edu/acad/intrel/jc.htm>. Professor Castledine points out there is also some debate and disagreement about FGM in the African-American community. Some African-American women view the practice as a tradition that should be left undisturbed and further, see the Western attack on FGM as ethnocentric, meaning that whites are superimposing their values upon native people who should be left to decide what practices they value. On the other side is novelist Alice Walker, a strong and vocal opponent of FGM who views the practice as a violation of human rights. The World Health Organization, the United Nations Population Fund, UNICEF, and Amnesty International, just to name a few, all agree with Alice Walker.

94. Leslye Amede Obiora, in an article entitled "The Full Belly Quotient: Renegotiating a Rite of Passage" quotes Martha Nussbaum who states: "The attention given to FGM seems to me somewhat disproportionate among the many gross abuses the world practices against women." Leslye Amede Obiora, *The Full Belly Quotient: Renegotiating a Rite of Passage*, 24 WOMEN'S RTS. L. REP. 182 (2002-2003).

I disagree with this view and believe that FGM symbolizes all the abuses against women because it demonstrates the total and utter lack of power that women possess, even over their own bodies.

95. WORLD HEALTH ORGANIZATION, NEW DATA ON MALE CIRCUMCISION AND HIV PREVENTION POLICY AND PROGRAMME INSPECTION, http://data.unaids.org/pub/Report/2007/mc_recommendations_en.pdf.

The research evidence that male circumcision is efficacious in reducing sexual transmission of HIV from women to men is compelling. The partial protective effect of male circumcision is remarkably consistent across the observational studies (ecological, cross-sectional and cohort) and the three randomized controlled trials conducted in diverse settings. The three randomly controlled trials showed that male circumcision performed by well-trained medical professionals was safe and reduced the risk of acquiring HIV infection by approximately 60%.

act of intercourse does not require what amounts to a mini surgical procedure before each encounter as it does with women who have the most severe form of FGM.

It is easy to become outraged when one reads of a two-year old girl in Georgia who has her clitoris removed with a pair of scissors by her own father.⁹⁶ However, should the fear of being characterized as paternalistic and insensitive to ethnic cultures dampen our outrage for unknown women around the world, when we have now pierced the veil of secrecy and silence and more fully understand the horrific consequences of FGM? Yet, what in fact is an acceptable answer to the above-mentioned Nigerian man who questioned why Westerners would interfere in traditions and rituals that seemingly do not affect them? Where does one draw the line between Western paternalism and legitimate and justifiable outrage? Lastly, when there are conflicts over what is right and what is wrong in another culture, when should the outside view prevail and to what extent?

V. SOLUTIONS

*"Education is the most powerful tool you can use to change the world."*⁹⁷

Education

Of course, the most obvious antidote to eliminating this poisonous practice of FGM, is education. African-American poet, author, and historian, Maya Angelou has been quoted as saying: "When I knew better, I did better." Ironically, it is not only the societies which practice FGM that need to be educated, but also the Western world. Education of the Western world will result in outrage and should be followed by funding programs to assist in the eradication of FGM. This is especially crucial, since FGM has made its way to Western countries.

However, education, within the context of those practicing FGM takes on a much broader meaning and actually requires a shift in the paradigm of the collective consciousness, and dictates that there be both a basic retraining of men and women on the value of women and a change in behavior in the manner in which governments deal with FGM.

If one accepts the contention that FGM is a patriarchal construct designed to dominate, objectify, and neuter women,⁹⁸ it becomes obvious why the wide-scale education of men is vital to the end of FGM. Men in these societies must be educated so that they fully comprehend the emotional, physical and psychological damages that FGM imposes upon their women. This is a difficult task because of the centuries-old nature of the practice, the belief that repudiation of the practice is tied to Western imperialism, and the fact that FGM is also a metaphor for the general plight of women.

96. Mungin, *supra* note 6.

97. CreatetheFuture.com, *Quotes from the Past*, http://www.createthefuture.com/past_quotes.htm.

98. "Female genital mutilation. . . . One of the numerous things done to keep them in their place, under the foot of the dominate patriarchal culture." WALKER, *supra* note 34, at 282.

Notwithstanding these barriers, it is imperative that men participate in the eradication of FGM. One possible approach to confronting the problem, while respecting the nuances of practicing societies, is from the stand point of FGM as a health issue.⁹⁹ If men believe that FGM presents an overwhelming health crisis, which if left unchecked, will have detrimental effects on the economy of the society, perhaps they will be opened to listening to arguments for eradication. Those who are disinclined to listen to arguments on eradicating FGM for the overall benefit of women, may listen to arguments which speak to their own self interest. If men can be educated in a manner which eliminates the sexual politics, perhaps they will be more opened to change. The problem with this approach is it paints men as unthinking beings unable to reason out the need for the eradication of FGM. Instead, they must be subjected to "education light," so as not to offend their cultural sensibilities. In the final analysis, it is not so much important why men agree that FGM must cease, only that they do so.¹⁰⁰

Education of women is key to the elimination of FGM. More important than educating women, is deciding who will do the educating. The people who practice FGM and those subjected to FGM must be the ones who are educated, and in turn they must become the educators of their own societies. As mentioned above, FGM has a social context and any "outside" attempts at educating fall on deaf ears.¹⁰¹ Bell Hooks notes that internationally, women of color feel detached from the mainstream feminist movement.¹⁰² Therefore, it is important that educating women about FGM is not viewed as a Western woman, "bull in a china shop" vendetta against a cultural imperative. There is a role for Western women in the education process, and it is to make sure that the voices of women affected by FGM are heard. Western women can do this through raising the consciousness of the Western world and by raising money to

99. Ali Idrissou-Toure relates that a landmark event took place when a man named Tamphbre, a circumciser from Benin, went on tour to declare that he no longer favored FGM. His tour took him into regions where FGM is highly supported. One can only hope that this tour was effective in changing some minds. Who better to discuss the harm inflicted by FGM than a former practitioner? Ali Idrissou-Toure, *Rights-Benin: 2005 the Year of No More Excisions*, <http://ipsnews.net/africa/interna.asp?idnews=27048>.

100. This observation is not meant to be condescending; for all of the so-called enlightenment of Western women, there still remains deference to men in our culture. How many women of a "certain age" can remember their mother telling them to fix their husbands a plate of food. In addition, how many chores do young girls still perform that their brothers are not required to do. So, although the subject matter of this article dictates certain generalities, many in the Western world also live in glass houses.

101. This actually reminds one of the attempts by "outsiders" to force South Carolina to remove the Confederate Flag from the state house. These attempts have largely been viewed as attempts to dictate what the culture of South Carolina should be, carpet bagger superiority, and cultural insensitivity. The same arguments are made by those who favor FGM.

102. Bell Hooks:

If the white women who organized the contemporary movement towards feminism were remotely aware of the racial politics of American history, they would know that overcoming barriers that separate women from one another would entail confronting the reality of racism, and not just racism as a general evil in society, but the race hatred they might harbor in their own psyches.

BELL HOOKS, *AIN'T I A WOMAN? BLACK WOMEN AND FEMINISM* 122 (South End Press 1981).

support the native educators. The "just say no" approach will not work in this instance.

Here again, in light of the various reasons given in support of FGM, the most logical and supportable reason that women can give for the eradication of FGM is women's health. How does one argue against sexual fidelity or the potential for making a economically beneficial marriage contract when discussing the disadvantages of FGM? The difficulty is apparent. However, the issue of health is one that transcends age, gender, and cultures. All societies understand that they are diminished by ill health and the death of their people.¹⁰³ In addition, by focusing on women's health, blame is not an issue, and therefore, attacks on male egos are avoided.¹⁰⁴ Although this approach is most practical in achieving the desired result, it must be clearly stated that FGM is a social practice which carries dire health consequences. It is only when this is fully understood that the problem can be attacked at its roots.

Self-actualization

It is the hope that the outcome of the education process for both men and women is self-actualization. The importance of self-actualization cannot be overstated because once a woman has a sense of self-worth and feels empowered¹⁰⁵ to the point of rejecting FGM, she also has the ability to reject the practice for her daughters.¹⁰⁶ Although this concept might appear to reveal

103. This is especially true with the worldwide AIDS epidemic. There may be a difference of opinion in some societies with regard to the cause of the AIDS virus, but all have born witness to the devastating effects that it has had upon their countries.

104. In Benin, INTACT, a German group against FGM provided circumcisers with alternate means of making a living. In addition, no-interest loans are given to former practitioners to assist them with making the transition to some other occupation. The purpose of the loan is two-fold: it provides an income for the former circumciser, and it creates a relationship between the borrower and lender which allows the lender, in this case INTACT, the ability to monitor the behavior of the circumciser. Many of these loans have been used to replace circumcising with agriculture.. Toure, *supra* note 99.

This is important to understanding the difficulty of eradicating FGM. FGM is so tightly woven into that culture that it provides a living for circumcisers. If one has an income from performing FGM, she is less likely to be interested in ending the practice. However, education about the myriad of health problems that result from FGM coupled with the promise of providing for the income that would be lost as result of ceasing the "business" might be enough to convince a circumciser to stop plying her trade.

105. Professor Obiora defines her use of the term empowerment when discussing a grassroots anti-circumcision campaign facilitated by Tostan, a NGO based in Senegal:

I am using empowerment as the full belly quotient as a metaphor, if you get where I am headed. Compared with other anti-circumcision initiatives, the success of Tostan shows that the fight against female circumcision is best pursued within the context of larger transformative projects that attack the social inequality of women historically. When Tostan set out to provide skills and information that helped people better define and pursue their own goals, eradicating genital mutilation may not have been a paramount goal or a preliminary concern that the initial recruits brought to the program.

Obiora, *supra* note 20, at 184

106. The United States has seen a rise in cases of women seeking asylum to prevent their daughters from being subjected to FGM. The Board of Immigration Appeals held that a well-founded fear of female genital mutilation can be the basis for granting asylum under Section 208 of

Western naiveté, Ayaan Hirsi Ali demonstrates in her novel, *Infidel*, how self-actualization is the key to resistance, stating, "To accept subordination and abuse because Allah wrote it – that for me would be self hatred."¹⁰⁷ Likewise, once men become aware of the life-long effects of FGM, one can only hope that the awareness will lead to activism against FGM.

The African proverb: "If you educate a man, you educate a person, if you educate a woman, you educate a community,"¹⁰⁸ resounds with respect to the self-actualization of women. Once a woman is educated about FGM, perhaps her self-worth will also be realized and she will start to question her position in society in relationship to her male counterparts. The fact that her education and newly found consciousness were brought about by her peers will give validity to the questions and subsequent conclusions that she reaches because the knowledge was not imposed upon her by a group of well-meaning Western women, but by forces inside of her community. She can then share her knowledge with the women in her closest circle, and her knowledge and raised consciousness will have a ripple effect and spread to them. In addition, the men in the community can also benefit from the spread of education.

Ritual Replacement

Notwithstanding the "real" reasons behind FGM, one of the recurring themes or reasons for its existence is the whole notion of rites of passage. Proponents argue that FGM is a rite of passage from childhood to adulthood.¹⁰⁹ Here again, if one is to accept this statement as true, one is hard pressed to explain why this rite would ever be practiced on an infant, or upon any girl under the age considered adulthood by the practicing society. Every society has rites of passage.¹¹⁰ Fortunately, most of those do not have such dire consequences as female genital mutilation.

The whole notion of a rite of passage is valuable to a culture, and rather than declaring that such rituals are unimportant, in the case of FGM it might be advisable to replace it with a non-lethal ritual which achieves the same stated goals without inflicting such extreme harm upon its participants. This is very difficult because FGM, as a rite of passage, is purportedly a prerequisite for marriage and childbirth. Nonetheless, there are fertility rites and marriage rituals that have served other societies for centuries that could be used to replace FGM. The difficulty in delineating a full array of rituals that could be used to replace FGM demonstrates the complexity of the problem of FGM. Moreover, it is not the job of outsiders to dictate which rituals can replace FGM. Despite the

the Immigration and Nationality Act, 8 U.S.C. § 1158 (1194). *In re Fauziya Kasinga, Bd of Immig. Appeals*, File A73 476 695 (June 13, 1996).

107. AYAAN HIRSI ALI, *INFIDEL* 348 (FREE PRESS) (2007)

It would be intellectually dishonest if the author did not mention that as a result of Ali's self-actualization and subsequent activism, she received death threats that led to bodyguards, secret hiding places, and eventually led to her leaving her adopted home of Amsterdam for refuge in the United States.

108. African proverb

109. UNICEF *supra* note 75.

110. Western culture has graduations, Bar Mitzahs and Bat Mitzahs, debutante balls, weddings and the ubiquitous sweet- sixteen party.

horrific toll that it has taken on women around the world, FGM has filled a cultural need in the societies that practice it.

In addition, ritual replacement is a viable alternative because it acknowledges to societies that practice FGM that the Western world respects their rituals and traditions, but will not endorse those that harm the women and children of that society.

Shaming

When societies are resistant to education and when no attempts have been made to substitute healthier cultural rituals for FGM, shaming is another tactic that can be simultaneously employed to urge societies that it is in their best interest to end FGM. Societies which place so much value on public opinion should be responsive to public shaming. The fact that women are subjected to FGM to insure their purity and fidelity indicates that men in those societies care about their reputations. Presumably, men who care about their reputations should be susceptible to shaming.

In addition, on the national level, creating some sort of international list of countries, which do little to reign in the practice of FGM, will embarrass nations into legislating and enforcing laws to protect women.¹¹¹ Or, in a more extreme move, governments could issue strong travel warnings telling tourists that they should not visit countries where FGM is prevalent.¹¹² In this scenario, shaming shifts the focus from the individual participants to the governments that allow the practice to flourish. In doing so, it places the onus on the governments to address the issues attendant to FGM.

The problem which arises from the use of shaming is obvious and also equally complicated: one must have the moral authority to condemn another country for its abuses of human rights. In other words, the pot cannot call the kettle black. This is difficult in a world where there is authentic debate over legalized torture, unpopular wars, and nation building which is sometimes perceived as bullying. The countries that could do the most to shame and sanction offending nations are themselves mired in unpopular causes which have nations around the world questioning their ability to condemn others for their offenses.

Economic Development

In some societies, the stated reason for continuing FGM is to ensure that a woman makes a "good" marriage.¹¹³ Marriage for many women around the world is an economic enterprise, and refusal to undergo FGM relegates a woman to a life of abject poverty. If one accepts the argument that the Western world has an obligation to share the earth's resources and thereby increase the standard of living for all persons in these societies, it becomes obvious how economic development provides women with options which were not available

111. Here again, it is important that the sanctions do not trickle down to harm the individuals who the sanctions were intended to protect.

112. Something like the State Department warnings that currently exist about visiting certain countries might be an effective tactic in curtailing FGM.

113. Religious Tolerance *supra*, note 68.

to them in the past. Perhaps, with an increase in economic options, there will be a power shift, or better yet, a power sharing with respect to who is marriageable and who is not. Economic development is a win-win situation for both men and women in these societies because it directly addresses one of the stated rationales for requiring FGM. Unfortunately, this solution is not as viable in areas where economics is a mere pretext and female domination is the true reason behind continuing FGM.

The Convention against Torture

When all of the above-stated strategies have been utilized to no avail and nations continue the practice of FGM, it may be necessary to utilize a more aggressive approach to resolving the problem. It is at this point that the world community should consider invoking the Convention against Torture.

The Convention against Torture, a United Nations agreement, was ratified on June 26, 1987, for the distinct purpose of protecting human rights. Over 142 countries have thus far signed on to this agreement and thus, have agreed upon this definition of torture.¹¹⁴ The irony of this is that many of the signatories are the very countries listed above as major perpetrators of FGM.¹¹⁵

These signatories seemingly acknowledged that, as the preamble to the Convention against Torture states, "... recognition of inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, recognizing that those rights derive from the dignity of the human person. . ."¹¹⁶ It is clear that female genital mutilation is torture.¹¹⁷ However, there is obviously some disconnect from the message inherent in the preamble to the Convention and the reality of life for millions of women who reside in the offending countries. There are two very real and distinct possibilities that may account for this disconnect: first, some of these signatories may not recognize women as members of the human family who have inalienable rights which can

114. United Nations Convention Against Torture (1987)

For the purposes of this Convention, torture means any act by which severe pain or suffering, whether physical or mental is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third party, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

115. Signatories: Benin, Cameroon, Chad, Cote d'Ivoire, Democratic Republic of the Congo, Djibouti, Egypt, Gambia, Ghana, Guinea, Guinea-Bissau,, Indonesia, Kenya, Liberia, Niger, Nigeria, Senegal, Sierra Leone, Togo, Uganda, and Yemen. *Status of the Ratification of the Convention Against Torture*, <http://www.ohchr.org/english/law/cat-ratify.htm>.

116. See The United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Act, Part I, Article 1 (1), 1975. The Act prohibits all forms of torture, and FGM appears to fall into its definition of torture.

117. Camille Giffard states that there are three essential elements which constitute torture:

1. The infliction of severe mental or physical pain or suffering.
2. By or with the consent or acquiescence of the state authorities.
3. For a specific purpose, such as gaining information, punishment or intimidation.

CAMILLE GIFFARD, THE TORTURE REPORTING HANDBOOK, Human Rights Centre (Feb. 2000), <http://www.essex.ac.uk/torturehandbook/>.

be violated,¹¹⁸ or second, the horrific practices outlined above may not be viewed as torture by the offending nations.¹¹⁹

A closer examination of the former proposition - that women are not considered human beings who are as free as men and therefore are not protected by the language of the Convention reveals the obvious; that in many instances, as Efua Dorkenoo stated, women are viewed as the property of the men in their world.¹²⁰ If women are not considered members of human society as contemplated by the Convention, then it becomes easy to rationalize the apparent disconnect of signing an agreement which is violated even as one signs it.

The second distinct possibility for the disconnect between signing the Convention and honoring the Convention is the belief that FGM is not torture. When the above mentioned gentleman chastised the author for interfering with the traditions of his culture and homeland, what he was really offended by was the notion that a "ritual" that he deemed an integral part of his culture was being called torture by a Westerner.¹²¹ It is easy to understand this position if one shares the view that women are chattel who belong to not just their husbands, but their fathers, brothers, and any other males who assert authority over them.¹²²

118. WALKER *supra*, note 34 at 249. Interview with Efua Dorkenoo; Alice Walker Stated: It's like in the old days, when we were enslaved in the United States:

If anyone came onto a plantation and tried to help the slaves in any way, the master said, You can't, because I have control over this slave, and there is nothing I will let you do because I basically own this person and I control this person. Whether I flog this person, is none of your business, because this person belongs to me.

119. This second explanation for the apparent disconnect between nations signing the agreement while allowing FGM to continue suggests some sort of benign neglect or lack of knowledge on the part of the offending nations. However, Catherine L. Annas stated, " In the international forum, female genital mutilation has been recognized as a human rights violation. It is a violation of the Geneva Convention and has been denounced by numerous international tribunals, including the U.N. commission on Human rights and WHO. ANNAS, *supra* note 20, at 325.

120. WALKER *supra*, note 34 at 249.

121. See Preface at 1

122. ALI *supra* note 79, at 80.

Ayaan Hirsi Ali tells an especially horrific story about how an itinerant ma'alim, hired by her mother to teach her and her siblings the Quran - the old way, beat her and caused a skull fracture that landed her in the hospital for emergency surgery. There were no repercussions against this man for what he did to her. His wrath was accepted as justified by the respective positions of the parties:

Just as I was closing the gate, a hand came down on my wrist. The ma'alim was back, with another man. He must have walked all the way back to Eastleigh and brought back this man with him because he could not be alone with girls in a strange house. They dragged me inside and the ma'alim blindfolded me with a cloth and started to hit me with all his strength with a sharp stick, to teach me a lesson.

Because I had been washing the floor I was wearing only an undershirt and skirt; my arms and lower legs were bare, and the lashes were really painful. Suddenly I felt a surge of rage. I tore off the blindfold and glared at the ma'alim. I really wanted to stand up to this man. He grabbed my braided hair and pulled my head back, and then he shoved it against the wall. I distinctly heard a cracking noise. Then he stopped. There was this uneasy quiet, like something had gone wrong. And then the ma'alim picked up his things and left, along with the stranger he had brought with him.

Why use the Convention against Torture when there are various other pacts which condemn violence against women and children? The short answer is that the Convention against Torture, as it has been interpreted, implicitly carries within its text provisions for the three Rs: Reporting, Responsibility, and Remedies.¹²³

Reporting

Articles 1 through 9 of the Convention against Torture set out the criminal and civil penalties for torture.¹²⁴ In order to effectuate these articles, there must be a reporting mechanism in place to ascertain the who, what, when, and where of the alleged torture. Article 13 does just that; it provides a mechanism for ascertaining the who, what, when, and where while protecting the complainant and witnesses.¹²⁵

Camille Giffard writes, "Reporting allegations of torture to the international mechanisms can be of benefit both to the general situation in a country and to an individual victim of torture."¹²⁶ Giffard further asserts that when information supports allegations, a pattern of violations emerges that can then be addressed.¹²⁷ Giffard says that by reporting torture, the following can be accomplished:

1. Draw attention to a situation/establish a pattern of violations;¹²⁸
2. Seek positive changes in a general situation;¹²⁹
3. Combat impunity;¹³⁰
4. Seek a remedy for an individual victim.¹³¹

In providing that, "Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction," the Convention against Torture implicitly charges its signatories to have a reporting system for allegations of torture. Reporting instances of FGM is the first step in bringing international scrutiny to it. Once a pattern has been established, based on documented statistics of individuals with names, faces, personalities, hopes and dreams, the international community is no longer able to ignore FGM.

123. GIFFARD, *supra* note 117.

124. *See supra* note 35, at ART 1–9.

125. *Id.* at ART.13

126. GIFFARD, *supra* note 117, part 3.2.

127. *Id.* at 3.2.1. Giffard writes:

Governments whose agents commit human rights abuses prefer to keep such practices out of the public eye in order to escape condemnation. Reporting allegations to the international mechanisms goes a long way towards preventing this because it raises awareness of the real situation in a country. The international community is most likely to take action with regard to situations about which it receives a lot of information. The only way to increase the possibility of the rest of the world taking action against human rights violations in a country is to make sure that it knows about the situation.

128. *Id.* at p. 9, 3.2.1.

129. *Id.* at p. 10, 3.2.2.

130. *Id.* at p. 10, 3.2.3.

131. *Id.* at p. 10, 3.2.4.

Of course, it is relatively easy to document FGM when authors, who have been subjected to FGM, write about it or when it occurs on American soil. It is far more difficult to document and report FGM in areas where the women are silent because they have been co-opted into believing that the procedure is essential to their economic survival, that they will be unable to marry as a result of refusing to be cut, or when women are afraid to speak against what they believe to be a religious imperative. In addition, it must be acknowledged that there are a number of women who do not believe that FGM is torture and therefore, would not be inclined to report that they and their daughters, sisters and mothers have been subjected to it.

Moreover, as Giffard notes, reporting also enables a state to seek constructive long-term solutions for ending FGM.¹³² In other words, reporting not only serves a potentially punitive solution to FGM, but also invites solutions that will improve the plight of women and in doing so, raise the standard of living for all citizens of the state.

Giffard also writes that reporting combats impunity.¹³³ Once a state has a reporting mechanism in place, it can no longer contend that it did not know what was happening to women within its borders. Failure to act against the individuals within the state who practice FGM would then impute the liability for the consequences of FGM to that state.

Lastly, reporting establishes a record which contains pertinent facts, such as who the victim is and the extent of her injury. This information is crucial in fashioning remedies for victims of FGM.

Responsibility

The Convention against Torture places the responsibility for torture on the torturer as well as the signatory state which fails to act on behalf of the victim. This is crucial if the eradication of FGM is ever to be accomplished.

First, Article 10 makes signatories responsible for providing education and information about the torture to citizens at large and anyone who will have contact with the victim and the torturer.¹³⁴ As stated above, education is crucial to the eradication of FGM.

Article 4 requires that torture be punished under the criminal statutes of its signatories.¹³⁵ This creates the responsibility of enacting legislation which would directly address FGM. Moreover, *The Torture Reporting Handbook* lists several other enactments that can occur on a national level. These include, but are not

132. *Id.* at p. 10, 3.2.2.

133. GIFFARD, *supra* note 117.

134. Specifically, Article 10 provides:

Each party state shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment. Each state shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such person. See *supra* note 35.

135. UN Convention, *supra* note 36, at ART 4. Article 4 also states that those who aid and abet will also be subject to those criminal statutes.

limited to civil, administrative, and disciplinary proceedings, as well as, asylum claims, and exceptional remedies.¹³⁶ Article 2 bolsters Article 4 because it states, "No exceptional circumstances whatsoever. . . . may be invoked as a justification of torture."¹³⁷ This article renders moot all of the justifications that are generally given for the continuation of FGM. What this article of the Convention against Torture is really saying is that no excuse will be accepted; not purity, religion, economics, nor marriageability.

In addition, Article 14 includes language which makes signatories responsible for providing remedies for victims of torture. Implicit in this article is the notion that the ultimate responsibility of enforcing remedies is on the state, even when it requires that the nation-state absorb the costs of monetary remedies.¹³⁸

Lastly, the Convention against Torture mandates that the torturer(s) be held responsible for his actions via enforcement of criminal laws.¹³⁹ This is necessary, but very troubling because this mandate brings us full circle to one of the main problems of FGM; women torturing other women for all of the reasons delineated in this article. The question becomes - how does a nation-state punish the perpetrators of torture against babies, girls, and women without victimizing the victims? Part of the answer comes in the form of the penalties that signatories impose as a result of a violation of the criminal statutes that have been enacted to combat FGM. There is nothing that would prohibit a state from mandating education as a penalty for FGM.

Remedies

A basic tenet of American jurisprudence is that in order for a wrong to be addressed there must be an injury, caused by a specific defendant, and the injury must be redressable.¹⁴⁰ The Convention against Torture is also clear on this issue and states:

Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependents shall be entitled to compensation.¹⁴¹

In the case of FGM, it is virtually impossible to fashion a remedy that literally makes the victim whole since an integral and essential part of her body has been

136. CAMILLE GIFFARD, *THE TORTURE REPORTING HANDBOOK*, Human Rights Centre (Feb. 2000).

137. UN Convention *supra* note 35, at ART 2.

138. This notion is so very important because a monetary judgment that cannot be enforced will mean nothing to a victim. This is especially true when the torturer/circumciser is another poor person trying to make a living by performing this tradition. Consequently, the burden of paying monetary damages must fall squarely on the nation state. This should provide an extra incentive to states to take steps to eradicate FGM.

139. UN Convention, *supra* note 35, at ART 2, 3, 4.

140. ERWIN CHERMERINSKY, *CONSTITUTIONAL LAW PRINCIPALS AND POLICIES* 54-55, (Aspen 3rd ed. 2006).

141. UN Convention, *supra* note 35, ART 14.

removed;¹⁴² thus, we are talking about remedy in the true legal sense of the word.

In Africa, the Cairo Declaration for the Elimination of FGM and the Afro-Arab Expert Consultation on "Legal Tools for the Prevention of Female Genital Mutilation" recommended that women and girls have access to legal remedies for FGM.¹⁴³ In other words, victims may file civil actions for the injuries they sustained in undergoing FGM, but who is the proper defendant?

One of the remedies discussed was that of monetary compensation. It is unclear as to who would be responsible for compensating victims of FGM. The only logical conclusion that one can reach is that the nation state would assume the liability for any monetary judgment awarded to a victim of FGM. Otherwise, the judgment has no force and meaning. Surely, the circumciser, many of whom are itinerant, illiterate individuals who rely upon their trade for their livelihood, cannot be the individuals who give monetary compensation to the victims of FGM. Therefore, when a nation state endorses the use of remedies for victims of FGM, it must serve as guarantor on the judgment. In a sense, the call for remedies is a giant leap forward because a discussion of remedies acknowledges that a wrong has been committed. The issue of remedies addresses the legal rights of the women victimized by FGM, while rehabilitation speaks to the physical, emotional, and psychological healing of the women who have been subjected to torture. Providing meaningful remedies for FGM will lead to the rehabilitation of its victims.

Raising the Status of Women Worldwide

*"We must continue to fight female genital mutilation until every African mother knows that she has the right to say 'I will not circumcise my daughter.'"*¹⁴⁴

142. This is only partially true because cosmetic surgery has made miraculous strides in creating vaginas. This surgery is most notably used in cases of transgendered individuals who are females in male bodies, who opt to have their penises removed and vaginas created in their stead, or in instances where women are born without vaginas. Perovic SV, Stanojevic DS, and Djordjevic ML, *Vaginoplasty in Male Transsexuals Using Penile Skin and a Urethral Flap*, 843-85086 (7) BJU INT'L, 843-50 (Nov. 2000).

However, this option is certainly not available to all women, especially those whom have never been in a hospital in their lives. The initial mutilation was not performed in a hospital, their babies were not born in hospitals, and the financial costs of rebuilding one's genitals is prohibitive, irrespective of who is bearing the cost.

143. THE NATIONAL COUNCIL FOR CHILDHOOD AND MOTHERHOOD, AFRO-ARAB EXPERT CONSULTATION: LEGAL TOOLS FOR THE PREVENTION OF FEMALE GENITAL MUTILATION, http://www.reproductiverights.org/pdf/pdf_fgm-cairo2003_eng.pdf.

Specifically the Declaration recommends:

Women and girls should be empowered to access legal remedies specified by law to prevent FGM. In particular, women and girls who are victims or potential victims of FGM have the right to bring a civil action to seek compensation from practitioners or to protect themselves from undergoing FGM. Resources, such as information on legal rights, legal assistance, and social services and support for girls who may face negative repercussions from their families and communities, should be provided to women and girls. Medical professionals should assist by providing evidence supporting the claim of the girl or woman who has undergone FGM. The deterrent effect on practitioners of possible civil actions against them involving damages may be significant.

144. Steele, *supra* note 88, at 135

The most obvious way to eradicate FGM is to raise the status of women worldwide.¹⁴⁵ In fact, the slogan for International Women's Day 2007 was "Ending Impunity for Violence Against Women and Girls."¹⁴⁶ This daunting task of raising the status of women and girls must be, by its very nature, the subject of another article.

V. CONCLUSION

A July 11, 2007 headline reads, "Concern grows in Britain over female genital mutilation."¹⁴⁷ The article reports in the "story highlights" that:

1. Police began a campaign to make the practice a crime;
2. A 20,000 pound reward is being offered for information leading to the United Kingdom's first prosecution;
3. And, the problem mostly involves first-generation immigrants from Africa and the Middle East.¹⁴⁸

And so, this discussion has come full circle.¹⁴⁹ FGM is no longer a problem of the under-developed, uninformed world. FGM is in plain view of the Western world and has reached the shores of the United States, Europe, and other countries that have become home to those cultures which embrace and promote this practice. We can no longer make the argument that we did not know that this practice exists, nor can we argue that it is anything but torture. The world can no longer make policy and operate with its eyes wide shut. The world has the tools and the resources to end this form of torture against infants, girls and women. It is past time for the world to resist; female genital mutilation must end today.

145. There are some daunting statistics from a UN report entitled "Women at a Glance." This report was issued in May 1997. Here are just a few facts from that report:

1. Women have not achieved equality with men in any country;
2. Of the world's 1.3 billion poor people, it is estimated that nearly 70 percent are women;
3. Of the world's nearly one billion illiterate adults, two-thirds are women;
4. One in every four households in the world is now headed by a woman;
5. The use of rape as a weapon of war has become more evident;
6. The primary victims of today's wars are civilian women and their children, not soldiers.

UNITED NATIONS, WOMEN AT A GLANCE, <http://www.un.org/ecosocdev/geninfo/women/women96.htm>.

146. International Women's Day 2007, Ending Impunity for Violence Against Women and Girls, March 2007. The underlying documents stresses the theme that women have the right to be free from violence. "Further, the acceptance of violence against women and girls either explicitly or tacitly" – creates a culture of impunity which perpetuates the violence." Ending the Impunity for Violence against Women and Girls, United Nations Department of Public Information, DPI/2451, March 2007.

147. See *Concern grows in Britain over female genital mutilation*, http://www.dailymail.co.uk/pages/live/femail/article.html?in_article_id=505796&in_page_id=1879.

148. *Id.*

149. Mungin, *supra* note 6.

